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9 **UNITED STATES DISTRICT COURT**
10 **FOR THE WESTERN DISTRICT OF WASHINGTON**
11 **AT SEATTLE**

11 DONNA COPELAND, on behalf of herself
12 and all others similarly situated,

13 Plaintiff,

14 v.
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16 ALBION LABORATORIES, INC.; SEEKING
17 HEALTH, LLC; and DESIGNS FOR
18 HEALTH, INC.,

19 Defendants
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Case No. 15-cv-00585-MJP

**ANSWER AND AFFIRMATIVE
DEFENSES OF DEFENDANT
DESIGNS FOR HEALTH, INC.**

1 Defendant Designs for Health, Inc. hereby answers the Complaint (Dkt. 1) of
2 Plaintiff Donna Copeland and asserts affirmative defenses as follows. Except as otherwise
3 specifically admitted or denied, this Defendant is without knowledge or information
4 sufficient to form a belief as to the truth of any allegations pertaining to other Defendants
5 and on that basis denies them.

6 I. NATURE OF THE CASE

7 1. Except for the last sentence of paragraph 1 of the Complaint, this Defendant
8 is without knowledge or information sufficient to form a belief as to the truth of the
9 allegations in paragraph 1 of the Complaint and on that basis denies them. This Defendant
10 denies the last sentence of paragraph 1 of the Complaint.

11 2. This Defendant admits that it sold products containing the Albion-
12 produced “TRAACS® Magnesium Bisglycinate Chelate Buffered” product. This
13 Defendant is without knowledge or information sufficient to form a belief as to the truth
14 of the remainder of the allegations in paragraph 2 of the Complaint and on that basis
15 denies them.

16 3. This Defendant is without knowledge or information sufficient to form a
17 belief as to the truth of the allegations regarding the other Defendants’ actions or
18 decisions described in paragraph 3 of the Complaint and on that basis denies them. This
19 Defendant admits that it sold products containing magnesium and that it listed the source
20 of the magnesium as “TRAACS® Magnesium Bisglycinate Chelate Buffered.” This
21 Defendant is without knowledge or information sufficient to form a belief as to the truth
22 of the remaining allegations relating to this Defendant in paragraph 3 of the Complaint
23 and on that basis denies them.

24 4. This Defendant is without knowledge or information sufficient to form a
25 belief as to the truth of the allegations in paragraph 4 of the Complaint and on that basis
26 denies them.

27 II. PARTIES

28 5. This Defendant is without knowledge or information sufficient to form a

1 belief as to the truth of the allegations in paragraph 5 of the Complaint and on that basis
2 denies them.

3 6. This Defendant is without knowledge or information sufficient to form a
4 belief as to the truth of the allegations in paragraph 6 of the Complaint and on that basis
5 denies them.

6 7. This Defendant is without knowledge or information sufficient to form a
7 belief as to the truth of the allegations in paragraph 7 of the Complaint and on that basis
8 denies them.

9 8. This Defendant is without knowledge or information sufficient to form a
10 belief as to the truth of the allegations in paragraph 8 of the Complaint and on that basis
11 denies them.

12 9. This Defendant is without knowledge or information sufficient to form a
13 belief as to the truth of the allegations in paragraph 9 of the Complaint and on that basis
14 denies them.

15 10. This Defendant is without knowledge or information sufficient to form a
16 belief as to the truth of the allegations in paragraph 10 of the Complaint and on that basis
17 denies them.

18 11. This Defendant denies that it or any other Defendant engaged in unfair and
19 deceptive practices. This Defendant denies that the Plaintiff and Class members paid a
20 “price premium.” This Defendant is without knowledge or information sufficient to form
21 a belief as to the truth of the allegations in paragraph 11 of the Complaint and on that basis
22 denies them.

23 12. This Defendant is without knowledge or information sufficient to form a
24 belief as to the truth of the allegations in paragraph 12 of the Complaint and on that basis
25 denies them.

26 13. This Defendant is without knowledge or information sufficient to form a
27 belief as to the truth of the allegations in paragraph 13 of the Complaint and on that basis
28 denies them.

1 14. This Defendant admits that it has a business address at 980 South Street,
2 Suffield, Connecticut 06078. This Defendant further admits that it sells products
3 internationally, but is uncertain what Plaintiff intends to include by use of “worldwide.”
4 This Defendant denies the remaining allegations in paragraph 14 of the Complaint.

5 **III. JURISDICTION AND VENUE**

6 15. This Defendant admits that the named Plaintiff and the Defendants are
7 citizens of different states. This Defendant is without knowledge or information sufficient
8 to form a belief as to the truth of the remainder of the allegations in paragraph 15 of the
9 Complaint and on that basis denies them.

10 16. This Defendant admits that it has sold products in Washington and done
11 business in Washington. The remaining allegations in paragraph 16 of the Complaint are
12 denied.

13 **IV. GENERAL ALLEGATIONS**

14 17. This Defendant is without knowledge or information sufficient to form a
15 belief as to the truth of the allegations in paragraph 17 of the Complaint and on that basis
16 denies them.

17 18. This Defendant admits that magnesium is critical to a wide variety of
18 essential bodily functions. This Defendant is without knowledge or information sufficient
19 to form a belief as to the truth of the remainder of the allegations in paragraph 18 of the
20 Complaint and on that basis denies them.

21 19. This Defendant admits the allegations in paragraph 19 of the Complaint.

22 20. This Defendant is without knowledge or information sufficient to form a
23 belief as to the truth of the allegations in paragraph 20 of the Complaint and on that basis
24 denies them.

25 21. This Defendant is without knowledge or information sufficient to form a
26 belief as to the truth of the allegations in paragraph 21 of the Complaint and on that basis
27 denies them.

28 22. This Defendant is without knowledge or information sufficient to form a

1 belief as to the truth of the allegations in paragraph 22 of the Complaint and on that basis
2 denies them.

3 23. This Defendant is without knowledge or information sufficient to form a
4 belief as to the truth of the allegations in paragraph 23 of the Complaint and on that basis
5 denies them.

6 24. This Defendant is without knowledge or information sufficient to form a
7 belief as to the truth of the allegation that “consumers believe Glycinate is superior to
8 Oxide” in paragraph 24 of the Complaint and on that basis denies it. This Defendant is
9 without knowledge or information sufficient to form a belief as to the truth of the
10 remainder of the allegations in paragraph 24 of the Complaint and on that basis denies
11 them.

12 25. This Defendant is without knowledge or information sufficient to form a
13 belief as to the truth of the allegations in paragraph 25 of the Complaint and on that basis
14 denies them.

15 26. This Defendant admits that “Glycinate,” as defined in the Complaint, is a
16 chelated form of magnesium, but denies that “chelated” means “it is combined with
17 another substance to increase absorption and bioavailability.” This Defendant further
18 admits that “Oxide,” as defined in the Complaint, is not chelated. This Defendant is
19 without information or belief sufficient to form a belief as to the truth of the remainder of
20 the allegations in paragraph 26 of the Complaint and on that basis denies them.

21 27. This Defendant is without knowledge or information sufficient to form a
22 belief as to the truth of the allegations involving Albion’s actions or its reasons for them in
23 paragraph 27 of the Complaint and on that basis denies them. This Defendant admits that
24 Albion’s Product Data Sheet lists magnesium glycinate and magnesium oxide as
25 ingredients and that Exhibit A is an accurate representation of the Product Data Sheet.
26 This Defendant admits that paragraph 27 includes a visual representation of this
27 Defendant’s Magnesium Glycinate Chelate Capsules supplement label as it existed prior
28 to approximately November 2010, but denies the remainder of the allegations contained

1 in paragraph 27 of the Complaint.

2 28. This Defendant is without knowledge or information sufficient to form a
3 belief as to the truth of the allegations in paragraph 28 of the Complaint and on that basis
4 denies them.

5 29. This Defendant is without knowledge or information sufficient to form a
6 belief as to the truth of the allegations in paragraph 29 of the Complaint and on that basis
7 denies them.

8 30. This Defendant is without knowledge or information sufficient to form a
9 belief as to the truth of the allegations in paragraph 30 of the Complaint and on that basis
10 denies them.

11 31. This Defendant is without knowledge or information sufficient to form a
12 belief as to the truth of the allegations in paragraph 31 of the Complaint and on that basis
13 denies them.

14 32. This Defendant denies the allegations in paragraph 32 of the Complaint to
15 the extent it has actual knowledge of its own profits. This Defendant otherwise is without
16 knowledge or information sufficient to form a belief as to the truth of the allegations in the
17 remainder of paragraph 32 of the Complaint and on that basis denies them.

18 33. This Defendant denies that its labeling practice is “deceptive” or that it
19 “defies the FDA’s explicit instructions.” This Defendant admits that 21 C.F.R. §
20 101.36(a) covers the labeling of dietary supplements and that the Magnesium Glycinate
21 Chelate product at issue in this case is not exempt under 21 C.F.R. § 101.36(h).

22 34. This Defendant admits that Plaintiff purports to summarize portions of the
23 Code of Federal Regulations in paragraph 34 of the Complaint, but denies any remaining
24 factual allegations, legal conclusions, or arguments contained in paragraph 34 of the
25 Complaint.

26 35. This Defendant denies the allegations in the first sentence of paragraph 35
27 of the Complaint. The remaining sentences of paragraph 35 are either legal conclusions or
28 statements not requiring a response and therefore this Defendant denies them.

1 36. Paragraph 36 of the Complaint contains only legal conclusions or arguments
2 that do not require a response and this Defendant denies them on that basis.

3 37. This Defendant denies the allegations in paragraph 37 of the Complaint
4 insofar as they are legal conclusions or arguments not requiring a response.

5 38. This Defendant is without knowledge or information sufficient to form a
6 belief as to the truth of the allegations in paragraph 38 of the Complaint and on that basis
7 denies them.

8 39. This Defendant admits that it entered into an agreement with Albion titled
9 “Trademark and Patent Number License Agreement,” but denies the remaining
10 allegations in paragraph 39 of the Complaint because they are legal conclusions and not
11 factual allegations.

12 40. This Defendant is without knowledge or information sufficient to form a
13 belief as to the truth of the allegations in paragraph 40 of the Complaint and on that basis
14 denies them.

15 41. This Defendant is without knowledge or information sufficient to form a
16 belief as to the truth of the allegations in paragraph 41 of the Complaint and on that basis
17 denies them.

18 42. This Defendant is without knowledge or information sufficient to form a
19 belief as to the truth of the allegations in paragraph 42 of the Complaint and on that basis
20 denies them.

21 43. This Defendant is without knowledge or information sufficient to form a
22 belief as to the truth of the allegations in paragraph 43 of the Complaint and on that basis
23 denies them.

24 44. This Defendant is without knowledge or information sufficient to form a
25 belief as to the truth of the allegations in paragraph 44 of the Complaint and on that basis
26 denies them.

27 45. This Defendant admits that it is required to abide by certain FDA
28 regulations and to not circumvent state consumer protections but denies any implication

1 that it has done so. This Defendant denies the remainder of the allegations in paragraph
2 45 of the Complaint.

3 46. This Defendant denies the allegations in paragraph 46 of the Complaint.

4 47. This Defendant is without knowledge or information sufficient to form a
5 belief as to the truth of the allegations in paragraph 47 of the Complaint and on that basis
6 denies them.

7 48. This Defendant admits that paragraph 48 of the Complaint contains two
8 paragraphs from the letter attached to the Complaint as Exhibit E, which this Defendant
9 admits that it received from Albion. This Defendant is without knowledge or information
10 sufficient to form a belief as to the remaining allegations in paragraph 48 and on that basis
11 denies them.

12 49. This Defendant is without knowledge or information sufficient to form a
13 belief as to the truth of the allegations contained in paragraph 49 of the Complaint and on
14 that basis denies them.

15 **V. CLASS ACTION ALLEGATIONS**

16 50. This Defendant admits that Plaintiff has alleged grounds for class
17 certification under Federal Rule of Civil Procedure 23, but denies that the action meets
18 the requirements of Rule 23.

19 51. This Defendant admits that Plaintiff has alleged grounds for class
20 certification under Federal Rule of Civil Procedure 23, but denies that the action meets
21 the requirements of Rule 23. This Defendant otherwise denies or lacks knowledge or
22 information sufficient to form a belief as to the truth of any remaining allegations in
23 paragraph 51 of the Complaint.

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VI. FIRST CAUSE OF ACTION

**(Violation of the Washington Consumer Protection Act,
RCW § 19.86 *et seq.* – Non-Per Se Deceptive Business Practices)**

**(On behalf of Plaintiff and members of the Nationwide Class Against Defendant
Seeking Health, LLC Only)**

52. This Defendant re-alleges and incorporates by reference paragraphs 1 through 51 above as if fully set forth herein.

53. This Defendant denies that paragraph 53 of the Complaint contains a complete or accurate summary of the Washington Consumer Protection Act, RCW 19.86.

54. Paragraph 54 of the Complaint contains only legal conclusions or allegations regarding parties other than this Defendant and therefore do not require a response.

55. Paragraph 55 of the Complaint contains only legal conclusions that do not require a response.

56. This Defendant denies the allegations in paragraph 56 of the Complaint.

57. This Defendant denies the allegations in paragraph 57 of the Complaint.

58. This Defendant denies the allegations in paragraph 58 of the Complaint.

59. This Defendant denies the allegations in paragraph 59 of the Complaint.

60. This Defendant denies the allegations in paragraph 60 of the Complaint.

61. This Defendant denies the allegations in paragraph 61 of the Complaint.

VII. SECOND CAUSE OF ACTION

**(Violation of the Washington Consumer Protection Act, RCW § 19.86 *et seq.* –
Non-Per Se Unfair Business Practices)**

**(On behalf of Plaintiff and members of the Nationwide Class Against Defendant
Seeking Health, LLC Only)**

62. This Defendant re-alleges and incorporates by reference paragraphs 1 through 61 above as if fully set forth herein.

63. Paragraph 63 of the Complaint contains only legal conclusions that do not require a response.

64. Paragraph 64 of the Complaint contains only legal conclusions that do not

1 require a response.

2 65. This Defendant denies the allegations in paragraph 65 of the Complaint.

3 66. This Defendant denies the allegations in paragraph 66 of the Complaint.

4 67. This Defendant denies the allegations in paragraph 67 of the Complaint.

5 68. This Defendant denies the allegations in paragraph 68 of the Complaint.

6 69. This Defendant denies the allegations in paragraph 69 of the Complaint.

7 70. This Defendant denies the allegations in paragraph 70 of the Complaint.

8 71. This Defendant denies the allegations in paragraph 71 of the Complaint.

9 72. This Defendant denies the allegations in paragraph 72 of the Complaint.

10 73. This Defendant denies the allegations in paragraph 73 of the Complaint.

11 74. This Defendant denies the allegations in paragraph 74 of the Complaint.

12 75. This Defendant denies the allegations in paragraph 75 of the Complaint.

13 **VIII. THIRD CAUSE OF ACTION**

14 **(Violations of CUTPA - Conn. Gen. Stat. § 42-110a, *et seq.*)**

15 **(On behalf of Plaintiff and members of the Nationwide Class Against Defendant**
16 **Designs for Health, Inc. Only)**

17 76. This Defendant re-alleges and incorporates by reference paragraphs 1
18 through 75 above as if fully set forth herein.

19 77. Paragraph 77 of the Complaint contains only legal conclusions that do not
20 require a response, but to the extent a response is necessary, this Defendant the
21 allegations in paragraph 77 of the Complaint.

22 78. Paragraph 78 of the Complaint contains only legal conclusions that do not
23 require a response, but to the extent a response is necessary, this Defendant admits that it
24 engages in trade or commerce within the meaning of Conn. Gen. Stat. § 42-110a(4) and
25 denies any remaining allegations.

26 79. This Defendant denies the allegations in paragraph 79 of the Complaint.

27 80. This Defendant denies the allegations in paragraph 80 of the Complaint.

28 81. This Defendant denies the allegations in paragraph 81 of the Complaint.

1 82. This Defendant denies the allegations in paragraph 82 of the Complaint.

2 83. This Defendant denies the allegations in paragraph 83 of the Complaint.

3 84. This Defendant denies the allegations in paragraph 84 of the Complaint.

4 85. This Defendant denies the allegations in paragraph 85 of the Complaint.

5 86. This Defendant denies the allegations in paragraph 86 of the Complaint.

6 87. This Defendant denies the allegations in paragraph 87 of the Complaint.

7 88. This Defendant denies the allegations in paragraph 88 of the Complaint.

8 **IX. FOURTH CAUSE OF ACTION**

9 **(Breach of Express Warranty through Connecticut Product Liability Act)**

10 **(On behalf of Plaintiff and members of the Nationwide Class Against Defendant**
11 **Designs for Health, Inc. Only)**

12 89. This Defendant re-alleges and incorporates by reference paragraphs 1
13 through 88 above as if fully set forth herein.

14 90. This Defendant is without knowledge or information sufficient to form a
15 belief as to the truth of the allegations in paragraph 90 of the Complaint and on that basis
16 denies them.

17 91. This Defendant denies the allegations in paragraph 91 of the Complaint.

18 92. This Defendant denies the allegations in paragraph 92 of the Complaint.

19 93. This Defendant denies the allegations in paragraph 93 of the Complaint.

20 94. This Defendant denies the allegations in paragraph 94 of the Complaint.

21 95. This Defendant denies the allegations in paragraph 95 of the Complaint.

22 **X. FIFTH CAUSE OF ACTION**

23 **(Violation of the Utah Consumer Sales Practices Act, Utah Code § 13-11-1 *et seq.*)**
24 **(Deceptive Acts or Practices by Suppliers)**

25 **(On behalf of Plaintiff and members of the Nationwide Class Against Defendant**
26 **Albion Laboratories, Inc. Only)**

27 96. This Defendant re-alleges and incorporates by reference paragraphs 1
28 through 95 above as if fully set forth herein.

97. This Defendant denies the allegations in paragraph 97 of the Complaint.

98. Paragraph 98 of the Complaint contains only legal conclusions or argument that do not require a response.

99. Paragraph 99 of the Complaint contains only legal conclusions or argument that do not require a response.

100. Paragraph 100 of the Complaint contains only legal conclusions or argument that do not require a response.

101. Paragraph 101 of the Complaint contains only legal conclusions or argument that do not require a response.

102. Paragraph 102 of the Complaint contains only legal conclusions or argument that do not require a response.

103. Paragraph 103 of the Complaint contains only legal conclusions or argument that do not require a response.

104. Paragraph 104 of the Complaint contains only legal conclusions or argument that do not require a response.

105. This Defendant denies the allegations in paragraph 105 of the Complaint.

106. This Defendant denies the allegations in paragraph 106 of the Complaint.

107. This Defendant denies the allegations in paragraph 107 of the Complaint.

108. This Defendant denies the allegations in paragraph 108 of the Complaint.

109. This Defendant denies the allegations in paragraph 109 of the Complaint.

110. This Defendant denies the allegations in paragraph 110 of the Complaint.

111. This Defendant denies the allegations in paragraph 111 of the Complaint.

XI. SIXTH CAUSE OF ACTION

**(Violation of the Utah Consumer Sales Practices Act, Utah Code § 13-11-1 *et seq.*)
(Unconscionable Acts or Practices by Suppliers)**

**(On behalf of Plaintiff and members of the Nationwide Class Against Defendant
Albion Laboratories, Inc. Only)**

112. This Defendant re-alleges and incorporates by reference paragraphs 1

1 through 111 above as if fully set forth herein.

2 113. This Defendant denies the allegations in paragraph 113 of the Complaint.

3 114. Paragraph 114 of the Complaint contains only legal conclusions or argument
4 that do not require a response.

5 115. Paragraph 115 of the Complaint contains only legal conclusions or
6 argument that do not require a response.

7 116. Paragraph 116 of the Complaint contains only legal conclusions or
8 argument that do not require a response.

9 117. Paragraph 117 of the Complaint contains only legal conclusions or
10 argument that do not require a response.

11 118. This Defendant denies the allegations in paragraph 118 of the Complaint.

12 119. This Defendant denies the allegations in paragraph 119 of the Complaint.

13 120. This Defendant denies the allegations in paragraph 120 of the Complaint.

14 121. This Defendant denies the allegations in paragraph 121 of the Complaint.

15 **XII. SEVENTH CAUSE OF ACTION**

16 **(Unjust Enrichment)**

17 **(On behalf of Plaintiff and members of the Nationwide Class Against all** 18 **Defendants)**

19 122. This Defendant re-alleges and incorporates by reference paragraphs 1
20 through 121 above as if fully set forth herein.

21 123. This Defendant denies the allegations in paragraph 123 of the Complaint.

22 124. This Defendant denies the allegations in paragraph 124 of the Complaint.

23 **XIII. EIGHTH CAUSE OF ACTION**

24 **(Fraudulent Concealment)**

25 125. This Defendant re-alleges and incorporates by reference paragraphs 1
26 through 124 above as if fully set forth herein.

27 126. This Defendant denies the allegations in paragraph 126 of the Complaint.

28 127. This Defendant denies the allegations in paragraph 127 of the Complaint.

1 **Sixth Affirmative Defense**

2 Plaintiff's claims may be barred in whole or in part by the equitable doctrines of
3 waiver, estoppel, release, ratification, or assumption of risk.

4 **Seventh Affirmative Defense**

5 Plaintiff may not maintain this lawsuit as a class action because she and/or her
6 counsel will not fairly and adequately represented the purported Class.

7 **Eighth Affirmative Defense**

8 Plaintiff may not maintain this lawsuit as a class action because her claims are not
9 sufficiently typical of those of the putative Class.

10 **Ninth Affirmative Defense**

11 Plaintiff may not maintain this lawsuit as a class action because her claims are not
12 common to those of the putative Class and to the extent her claims are common to those
13 of the putative Class, those common claims do not predominate over individual issues.

14 **Tenth Affirmative Defense**

15 Plaintiff may not maintain this lawsuit as a class action because a class action is not
16 a superior method for adjudicating the claims alleged by the purported Class.

17 **Reservation of Rights**

18 This Defendant reserves the right to assert further affirmative defenses, based on
19 the course of discovery and proceedings in this action.

20 **XV. PRAYER FOR RELIEF**

21 WHEREFORE Defendant Designs for Health, Inc. requests that the Court enter
22 judgment in its favor and against Plaintiff Donna Copeland as follows:

- 23 1. That Plaintiff take nothing by its Complaint and that its claims be dismissed
24 with prejudice.
- 25 2. That the Court issue a declaration that:
- 26 a. Defendant does not violate the Connecticut Unfair Trade Practices
27 Act or the Connecticut Product Liability Act through any action
28 described in the Complaint.

1 b. Defendant Designs for Health has not unjustly enriched itself
2 through any action described in the Complaint or committed
3 fraudulent concealment through any action described in the
4 Complaint.

5 3. Such other and further relief as this Court deems just and proper.

6 Dated May 27, 2015.

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8 **NEWMAN DU WORS LLP**

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10 By: /s Derek Newman
11 Derek A. Newman, WSBA No. 26967
 Jason E. Bernstein, WSBA No. 39362

12 Attorneys for Defendant Designs for Health, Inc.
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